IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3295 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

DGP WINDSOR (INDIA) LTD.

Versus

DGP WINDSOR EMPLOYEES TRADE UNION

Appearance:

1. Special Civil Application No. 3295 of 2002

MR KS NANAVATI for NANAVATI ASSOCIATES for Petitioner

MR TR MISHRA for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 22/04/2002

C.A.V. JUDGEMENT

1. RULE. Learned counsel for the respondent waives service of Rule. By joint request of the learned counsel, the petition was taken up for final disposal.

2. The petitioner, employer-Company, has preferred this petition with a prayer to quash the order dated 2.2.2002 of the Commissioner of Labour made in exercise of his powers under Sections 10 (1) and 12 (4) & (5) of the Industrial Disputes Act, 1947 (`the ID Act' for short) adding to the earlier reference the dispute regarding discharge or dismissal of the workmen.

3. The relevant facts in brief are that the petitioner had, in the prevailing circumstances, transferred on or around 31.12.2001, 63 workmen to various places mentioned in the orders of transfer. The challenge to those transfer orders by way of Special Civil Application No.36 of 2002 in this Court was withdrawn by the trade union of the workmen with a view to approach the appropriate forum. While the dispute regarding transfer was under negotiation with the involvement of the Conciliation Officer, the petitioner Company, vide its order dated 9.1.2002, dismissed the workmen for their alleged serious misconduct in not following the legal and reasonable orders of transfer. Even as such dismissal orders were sent to the workmen concerned at their residential address by Registered A.D., the reference of the following dispute was made by an order dated 11.1.2002:

> "Whether the action of the Company in transferring the 63 workmen in various States outside Gujarat vide its order dated 31.12.2001 is legal and justified ?"

The Company contended that the dispute regarding transfer was not even admitted in conciliation as the parties were called by the Deputy Commissioner of Labour to attend the preliminary discussion to be held on 11.1.2002 and further discussion was to take place on 15.1.2002. However, upon the reference as above having been made to the Industrial Tribunal, Ahmedabad, it was registered as Reference (IT) No.1 of 2002 and an application for interim relief along with the statement of claim was also filed by the respondent union in the said reference on 15.1.2002. The Tribunal took the view that while the issue of legality of the transfers was pending, the orders terminating the service of the workmen were required to be stayed. Therefore, granting an injunction against implementation of such orders of termination upto 18.2.2002, an urgent show cause notice was ordered to be

issued and made returnable on 18.1.2002. The petitioner Company, in its written statement, raised preliminary contention that the reference dated 11.1.2002 had become infructuous because the workmen concerned were already dismissed vide orders dated 9.1.2002 and the legality and justifiability of the orders of dismissal could not be examined by the Tribunal. Amidst such controversy, the impugned order dated 2.2.2002 amending the earlier order of reference and adding the following dispute was made:

> "Whether the action of DGP Windsor (India) Ltd. terminating the services of the workmen shown in the list is justified and legal and whether the said workmen are entitled to be reinstated in their original position with full backwages with continuity of service ?"

With this development, the union submitted another statement of claim and an application for interim relief on 4.2.2002. After full-fledged hearing of the applications for interim relief submitted by the union (Exhs.4 and 24), the Tribunal, by its order dated 26.2.2002, inter alia, held that the transfer orders were not required to be gone into because the Company had already dismissed the workmen concerned but, since the dismissal orders stated disobedience of the transfer orders as the reason, the Tribunal could adjudicate the legality or otherwise of the dismissal orders and also examine the contentions of the union that the petitioner had violated the provisions of Section 9-A of the I.D.Act in transferring the workmen. However, by the operative order, both the applications at Exhs.4 and 24 were dismissed and the ex-parte ad-interim injunction was vacated. But under a separate application at Exh.39, the earlier stay against operation of the orders of dismissal dated 9.1.2002 was extended upto 15.3.2002, which stay has expired by now, and the challenge to that order, therefore, does not survive.

4. The petition was argued mainly on the grounds that the impugned order of reference by way of an addenda was made without entering into the conciliation process and was an altogether new and separate dispute having no connection with the earlier terms of reference regarding validity and propriety of the transfer of the workmen concerned. On the factual aspect, there are serious controversies about the timings of the actions taken by the petitioner and their effect. However, it cannot be gainsaid that the orders of transfer, the preliminary discussion for conciliation, the issuance of dismissal orders, their coming into effect and the orders of

reference are all inextricably linked with each other and form a series of events having bearing on each other. It is inconceivable that the issue of legality and propriety of dismissal could be examined or adjudicated in isolation and without reference to the factum and validity of the transfer. Therefore, it would be factually incorrect to say that both are totally independent and separate issues.

5. As regards the legal aspect of not holding full-fledged conciliation proceedings in respect of each of the disputes and taking the expedient course of notifying an addenda to the earlier reference between the same parties, the learned counsel relied upon several judgments of the Supreme Court. The judgment in SINDHU RESETTLEMENT CORPORATION LTD. v. INDUSTRIAL TRIBUNAL, GUJARAT AND OTHER [1968 (1) LLJ 834 (SC)] was relied upon to submit that service of charter of demand on the management and rejection thereof was necessary to constitute an industrial dispute. The judgments in STATE OF BIHAR v. D.N.GANGULY [AIR 1958 SC 1018] and STATE OF MAHARASHTRA v. K.E.UNION [AIR 1975 SC 635] were relied upon to submit that the I.D.Act does not confer upon the appropriate Government any power to cancel or supercede a reference or even withdraw a reference and there would be supersession of previous reference when a second reference of totally unconnected matter was made.

6. The learned counsel for the respondent referring to the same judgement in STATE OF MAHARASHTRA v. K.E.UNION (supra) submitted that a matter connected with or relevant to the earlier dispute could always be referred in exercise of the power conferred upon the government under Section 10 (1) (d) of the ID Act. The relevant part of the provisions of Section 10 regarding making of a reference clearly states that where appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may, at any time, by order in writing, refer the dispute. And, by virtue of the provisions of sub-section (4), a forum to which the dispute is referred is required to confine its adjudication to the points contained in the order referring the industrial dispute or in a subsequent order. This provision clearly envisages a subsequent order by which the appropriate Government may specify the additional points of dispute for adjudication. While sub-section (1) of section 10 of the ID Act confers upon the appropriate Government the power and discretion to refer any existing or apprehended industrial dispute at any time, the provisions of Section 12 provides for the option to hold conciliation proceedings. By no stretch

can it be said that the course of holding conciliation proceedings has to precede the making of a reference howsoever desirable that course may be.

6.1 It is also held by the Apex Court in AVON SERVICES PRODUCTION AGENCIES (P) LTD. v. INDUSTRIAL TRIBUNAL, HARYANA [AIR 1979 SC 170] in paragraph 6 that Section 10 (1) of the ID Act confers upon the appropriate government power to refer at any time any industrial dispute which exists or is apprehended. It is also held that if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters.

6.2 This Court has, in SCHOOT GLASS INDIA PVT. LTD. v. ASSISTANT COMMISSIONER OF LABOUR AND CONCILIATION OFFICER [2000-II-LLJ 1498], held that once the reference of a dispute is made, subsequent order passed by the authority to amend the reference already made is well within the jurisdiction and power of the authority. Taking a similar view, the Rajasthan High Court has, in MANAGER, RASHTRADOOT DAINIK PRESS, JAIPUR v. RAJASTHAN SAMACHAR PATRA KARMACHARI SANGH [1977 LAB.I.C. 1061], observed in paragraph 11 that since the appropriate government is entitled under section 10 (1) of the ID Act to make an independent reference or even a supplemental reference in respect of a matter pending adjudication before the Tribunal, it can by a subsequent notification amend the earlier reference which is merely in the nature of addition to or amplification of the issues already referred to the Industrial Tribunal. It has also been observed that this is so because amending a reference relating to a pending dispute by way of addition or amplification thereof is not inconsistent with any of the provisions of the Act and such a course would not defeat the purposes of the Act. These observations are made after referring to the judgment of the Supreme Court in D.N.GANGULY (supra).

6.3 The Apex Court has also, in DABUR, DEOGHAR, BIHAR v. WORKMEN [AIR 1968 SC 17], taken the view that the Government can correct any error or mistake and that such correction does not amount either to withdrawal of the reference or cancellation of the reference.

6.4 Applying the above dicta in the facts of the present case, it is held that the impugned order did not in any way refer an unconnected matter or withdraw or cancel the earlier order of reference, but instead, it provided comprehensive terms of reference to facilitate adjudication of the whole dispute taking care of the factual developments that took place even as the first order of reference was being issued.

7. The exercise of power under Section 10 (1) (d) of the ID Act in making a reference to the Tribunal is also in consonance with the scheme of the ID Act insofar as the disputes related to any matters specified either in the Second or in the Third Schedule could be referred to a Tribunal for adjudication and no exception to it could be taken on the ground that the dispute regarding dismissal could have been referred for adjudication only to a Labour Court.

8. Thus, the challenge to the impugned order on both the counts fails. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)